

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

June 24, 1982

Inc. ("Florist") is a Massachusetts corporation engaged in the business of selling flowers wholesale. Its customers include schools, churches and other organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. Some of these organizations purchase the flowers with the intention of reselling them to raise funds. For example, schools and churches sell single carnations to purchasers on the streets. You inquire whether sales by the Florist to these organizations are subject to the Massachusetts sales tax.

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise upon sales at retail of tangible personal property in Massachusetts. "Sale at retail" is defined in Chapter 64H, Section 1(13) as a sale of tangible personal property for any purpose other than resale in the regular course of business.

No person may do business in Massachusetts as a vendor unless a sales tax registration is issued to him by the Commissioner of Revenue for each place of business (G.L. c. 64H, s. 7).

Chapter 64H, Section 6(e) exempts from tax sales to any corporation, foundation, organization or institution exempt from taxation under Section 501(c)(3) of the Internal Revenue Code which uses its purchases in the conduct of the organization and holds a certificate of exemption from the Commissioner of Revenue.

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Chapter 64H, Section 6(c) exempts from tax casual and isolated sales by vendors not regularly engaged in the business of making sales at retail. Sales and Use Tax Regulation 830 CMR 16.01 provides that: "Casual and isolated sales are those of an infrequent, non-recurring nature made by a person not engaged in the business of selling tangible personal property." The regulation lists examples of exempt casual and isolated sales, including

"Sales by non-profit organizations at bazaars, fairs, picnics or similar events to the extent of two such events of a day's duration held during any calendar year; provided, however, that where sales are made at such events by an organization holding a registration certificate as a vendor, or otherwise required to hold such a registration certificate because its selling events are in excess of the number permitted, such sales constitute sales in the regular course of business and are not exempt as casual sales. An organization conducting an exempt casual sale, as heretofore defined, is deemed to be the consumer of that property which it purchases for resale and as such must pay the tax on purchases not otherwise exempt."

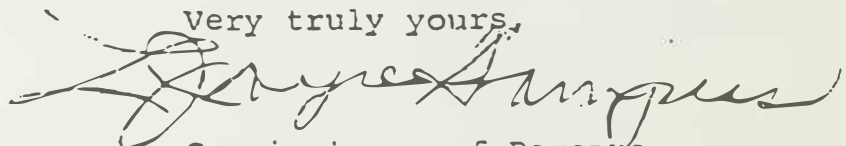
Based on the foregoing, it is ruled that:

1. Sales by the Florist to an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, which purchases flowers for resale and not for its own use, are not exempt from the Massachusetts sales tax under Section 6(e) of Chapter 64H.

2. If the organization purchases flowers for resale in the regular course of business, it must register as a Massachusetts vendor, furnish the Florist with a resale certificate covering the transaction and collect the sales tax from its customers.

3. If the organization is not regularly engaged in the business of making sales at retail and its sales of flowers to customers are exempt as casual and isolated sales, the organization must pay a sales tax to the Florist.

Very truly yours,



Commissioner of Revenue

LJH:JD:mf

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